

83-2126
No. _____

ne Court, U.S.
E D

JUN 11 1984

ALEXANDER L. STEVAS,
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1983

THE STATE OF OKLAHOMA,
Petitioner,

v.

TIMOTHY R. CASTLEBERRY
and
NICHOLAS RAINERI,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE
OKLAHOMA COURT OF CRIMINAL APPEALS

MICHAEL C. TURPEN
ATTORNEY GENERAL OF OKLAHOMA

DAVID W. LEE*
ASSISTANT ATTORNEY GENERAL
CHIEF, CRIMINAL AND FEDERAL
DIVISIONS

HUGH A. MANNING
ASSISTANT ATTORNEY GENERAL
112 State Capitol Building
Oklahoma City, OK 73105
(405) 521-3921

Attorneys for Petitioner

*Counsel of Record

QUESTIONS PRESENTED FOR REVIEW

1. Whether, under the Fourth Amendment principles set forth in United States v. Ross, 456 U.S. 798 (1982), when an officer has probable cause to believe that there is contraband in a specific container in a vehicle, he is required to obtain a search warrant for the vehicle and the compartments and containers therein or may he search the vehicle and compartments and containers for contraband without a warrant.

2. Whether, when officers arrest a suspect on probable cause, and the suspect, who is standing next to the vehicle, is able to place a container inside of a vehicle, the police may search the container as being a search incident to arrest.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED FOR REVIEW	i
OPINIONS BELOW	2
RELEVANT CONSTITUTIONAL PROVISIONS	2
STATEMENT OF THE CASE	3
REASONS FOR GRANTING THE PETITION	9
PROPOSITION I	
THE SEARCH OF THE SUITCASES IN THE TRUNK OF THE VEHICLE WAS JUSTIFIED UNDER THE AUTO- MOBILE EXCEPTION PRINCIPLE OF THE LAW OF SEARCH AND SEIZURE	9
PROPOSITION II	
THE SEARCH OF THE BAND-AID BOX FOUND IN THE FRONT SEAT OF THE VEHICLE WAS JUSTIFIED BOTH AS BEING AN OBJECT OF THE SEARCH UNDER THE AUTOMO- BILE EXCEPTION AND AS A SEARCH INCIDENT TO A LAWFUL ARREST	17
CONCLUSION	20
APPENDIX A	1a
OPINION OF THE OKLAHOMA COURT OF CRIMINAL APPEALS	1a

TABLE OF AUTHORITIES

Cases:	Page
<u>Arkansas v. Sanders,</u> 442 U.S. 753 (1979)	9,17
<u>Carroll v. United States,</u> 267 U.S. 132 (1925)	13
<u>Castleberry v. Oklahoma,</u> 678 P.2d 720 (Okla. Cr. 1984)	2
<u>Chambers v. Maroney,</u> 399 U.S. 42 (1970)	13
<u>Colorado v. Bannister,</u> 449 US. 1 (1980)	12
<u>Michigan v. Thomas,</u> 458 U.S. 259 (1982)	15
<u>New York v. Belton,</u> 453 U.S. 454 (1981)	14,17-20
<u>Texas v. White,</u> 423 U.S. 67 (1975)	13
<u>United States v. Chadwick,</u> 433 U.S. 1 (1977)	9,18
<u>United States v. Ross,</u> 456 U.S. 798 (1982)	i,9-12, 14,15-18
Statutes:	
28 U.S.C. § 1257(3)	2

TABLE OF AUTHORITIES--Continued

Other Authorities:	Page
LaFave, <u>Search and Seizure</u> , § 7.2, p. 200 (Supp. 1984) . .	13

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1983

No. _____

THE STATE OF OKLAHOMA,
Petitioner,

v.

TIMOTHY R. CASTLEBERRY
and
NICHOLAS RAINERI,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE
OKLAHOMA COURT OF CRIMINAL APPEALS

The Petitioner, the State of Oklahoma, by the Attorney General of Oklahoma, Michael C. Turpen, prays that a Writ of Certiorari issue to review the judgment of the Oklahoma Court of Criminal Appeals in this matter.

OPINIONS BELOW

The decision of the Oklahoma Court of Criminal Appeals from which the certiorari is sought was reported as Castleberry v. Oklahoma, 678 P.2d 720 (Okla.Cr. 1984). See Appendix A. This Opinion was filed on January 23, 1984, and the State of Oklahoma's (hereinafter referred to as "the State") Petition for Rehearing was denied on April 5, 1984. The Court's mandate was issued on April 11, 1984. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257(3).

RELEVANT CONSTITUTIONAL PROVISIONS

The Fourth Amendment to the Constitution of the United States provides:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly

describing the place to be searched, and the persons or things to be seized."

STATEMENT OF THE CASE

At approximately noontime on June 9, 1981, Officer R. D. Taylor of the Oklahoma City Police Department, Narcotics Division, received a telephone call from an informant advising him that at the Southgate Inn, located on South Interstate Highway 35 in Oklahoma City, Oklahoma, the informant had seen a large quantity of marijuana, some cocaine, and white pills in Room 113. The informant gave the officer a description of the men in the room and of the suitcase containing some of the narcotics. The informant also told the officer that one of the men was Tim Castleberry and the other was named Nick. The officer was also informed that they were driving a

1980 or 1981 blue Thunderbird with Florida license plates (Tr. I, 5-7).¹

Officer Taylor immediately went to the location. He drove through the parking lot and observed a blue 1980 or 1981, Thunderbird with Florida license plate in front of Room 113. He parked his vehicle approximately 5 parking spaces away from the car and went into the desk clerk, and after telling her that he was a police officer, inquired as to who was staying in Room 113 (Tr. I, 7). The desk clerk said that it was registered to a Tim Castleberry (Tr. I, 8).

The officer returned to his car and waited (Tr. I, 8). He had previously

¹The following transcript designations will be used: Tr. I - Transcript of proceedings held on September 1-2, 1981 (F-82-227); Tr. II - Transcript of trial proceedings held on September 23-24, 1981 (F-82-228).

called for assistance (Tr. I, 7). After a short wait, Officer Taylor observed the Respondent Castleberry (hereinafter referred to as the "Defendant Castleberry") exit the motel room carrying a baby blue leather suitcase (Tr. I, 8), and place it in the trunk of the car. He left the trunk open and the Respondent Raineri (hereinafter referred to as "Defendant Raineri") came out carrying two plaid suitcases, which were also placed in the trunk. Then a young male came out and went to a red car parked next to the Thunderbird. The Defendant Castleberry again came out of the room carrying another blue suitcase, which he placed in the backseat of his vehicle.

After inquiring about his backup, Officer Taylor approached the car while the door and the trunk were still open (Tr. I, 9). All three men were standing

outside. He held his badge in one hand and his service revolver in the other, advised the men he was a police officer and ordered them to place their hands on the car.

The Defendant Raineri placed his hands on the vehicle as ordered (Tr. I, 10), but the Defendant Castleberry, after closing the trunk of the car, reached behind his back. The officer twice asked him to place his hands on the car, but instead, the Defendant Castleberry threw something from behind his back into the car (Tr. I, 11). Officer Taylor then attempted to physically force the Defendant Castleberry to place his hands on the car, but ended up wrestling him to the ground.

While sitting on the ground, the Defendant reached up, locked the car

door, and closed it. The car keys were still in the car door.

At this time, Officer Taylor's partner, Officer Bill Citty arrived. Officer Taylor gave Officer Citty the car keys, told him he had smelled marijuana coming from the trunk, and asked him to open the trunk. Officer Citty then opened the trunk and also smelled marijuana (Tr. I, 11). Officer Citty then opened one of the suitcases and observed marijuana. Officer Taylor then advised the men that they were under arrest. Officer City then opened the blue leather suitcase and found that it contained a large sum of cash and a clear plastic baggy containing approximately 10 ounces of white powder (Tr. I, 12). The powder was later determined to be methaqualone powder (Tr. I, 37).

Officer Citty then opened the car door and searched the interior (Tr. II, 13). In that search, he found a white Band-Aid box on the dashboard of the vehicle which contained approximately an ounce of white powder (Tr. II, 14, 59-60). This white powder was later determined to be cocaine (Tr. II, 68).

The Defendant Castleberry was individually charged and tried for the offense of Possession of a Controlled Dangerous Substance with Intent to Distribute and was convicted of Possession of a Controlled Dangerous Substance. The Defendants Castleberry and Raineri were jointly charged and tried on two (2) counts each for the offense of Possession of a Controlled Dangerous Substance with Intent to Distribute and were subsequently convicted on both counts.

REASONS FOR GRANTING THE PETITION**PROPOSITION I**

THE SEARCH OF THE SUITCASES IN THE TRUNK OF THE VEHICLE WAS JUSTIFIED UNDER THE AUTOMOBILE EXCEPTION PRINCIPLE OF THE LAW OF SEARCH AND SEIZURE.

The Oklahoma Court of Criminal Appeals held that the officers illegally searched the suitcases found in the trunk of the vehicle, holding that the search fell within the dictates of Arkansas v. Sanders, 442 U.S. 753 (1979) and United States v. Chadwick, 433 U.S. 1 (1977), rather than those of United States v. Ross, 456 U.S. 798 (1982). The pertinent part of the Opinion of the Oklahoma Court of Criminal Appeals in this regard is as follows:

"If the officer has probable cause to believe there is contraband somewhere in the car, but he does not know exactly where, he may search the entire car as well as any containers found therein. [Citations omitted] . . . If, on the other hand, the officer has

only probable cause to believe there is contraband in a specific container in the car, he must obtain the container and delay his search until a search warrant is obtained." 678 P.2d at 724; Appendix, *infra*, 10a.

The Court held that since the suitcases and the Band-Aid box were the "suspected locations" of the contraband, "[t]he officers should have detained the containers until a search warrant had been obtained." 678 P.2d at 724; Appendix, *infra*, 12a.

The State contends that the ruling of the Oklahoma Court of Criminal Appeals is at odds with that of this Court in United States v. Ross, *supra*. In Ross, the Supreme Court specifically held that once probable cause is found that a vehicle contains contraband the entire vehicle may be searched without a warrant and "[t]he scope of a warrantless search based on probable cause is

no narrower--and no broader--than the scope of the search authorized by a warrant supported by probable cause." 456 U.S. at 823.

The State submits that the Court of Criminal Appeals erred when it held that officers must procure a search warrant for an automobile when they have knowledge of the suspected location of contraband within a vehicle but are not required to obtain a warrant when they know only that the contraband is somewhere within.

Furthermore, there is no significant distinction than the facts in Ross and the facts in the present case. In Ross, the police were advised by a confidential informant that an individual was selling narcotics kept in the trunk of the car. The facts in the present case set forth previously demonstrate the

abundance of information possessed by Officer Taylor which clearly establish probable cause.

It is important to note that the Court of Criminal Appeals did not adequately set forth their rationale for holding that the suitcases in the trunk were improperly searched. The Court said only that the "officers should have detained the containers until a search warrant had been obtained." 678 P.2d at 724.

The State submits that the holding of the Oklahoma Court of Criminal Appeals with regard to the search of the trunk conflicts not only with United States v. Ross, supra, but established Fourth Amendment law with regard to the automobile exception principle to the general requirement of a search warrant. Cf., Colorado v. Bannister, 449 U.S. 1

(1980); Texas v. White, 423 U.S. 67 (1975); Chambers v. Maroney, 399 U.S. 42 (1970); Carroll v. United States, 267 U.S. 132 (1925).

It is not rational to make the distinction between whether a search warrant should be obtained be based upon whether or not the officer had sufficient knowledge to believe that the contraband was in a specific part of a vehicle, as opposed to being in the vehicle generally. As was pointed out in LaFave, Search and Seizure, § 7.2, p. 200 (Supp. 1984), this holding would mean that the police may actually be able to broaden their power to make warrantless searches by revealing less than all their probable cause information. As stated previously, the Oklahoma Court of Criminal Appeals is holding that if the officers had been

advised by the informant only that somewhere in the vehicle there are narcotics they could have searched the vehicle without a warrant, but that by being told by the informant that the narcotics were located in the suitcases they were required to obtain a search warrant.

This rationale clearly goes against the stated desire of this Court that straightforward, workable rules regarding the search of vehicles be formulated to allow police, who have only limited time and expertise, to make decisions regarding the search of vehicles. United States v. Ross, supra; New York v. Belton, 453 U.S. 454, 458 (1981).

Furthermore, in United States v. Ross, supra, the police in that case also had specific knowledge as to the area in which narcotics were to be located, i.e., the trunk. Therefore, if

the reasoning of the Court of Criminal Appeals were used in the Ross case, (since the police knew of the location of the narcotics) they should have been required to obtain a search warrant.

In Michigan v. Thomas, 458 U.S. 259 (1982), this Court again rejected the argument that because a vehicle has been immobilized and the occupants is in custody the police are required to obtain a search warrant for the contents. The clear holding of the Court applies to the present case:

"In Chambers v. Maroney, 339 US 42 (1970), we held that when police officers have probable cause to believe there is contraband inside an automobile that has been stopped on the road, the officers may conduct a warrantless search of the vehicle, even after it has been impounded and is in police custody. We firmly reiterated this holding in Texas v. White, 423 US 67 (1975). See also United States v. Ross, 456 US 798, 807, n. 9 (1982). It is thus clear that the justification to conduct such a warrantless search does not

vanish once the car has been immobilized; nor does it depend upon a reviewing court's assessment of the likelihood in each particular case that the car would have been driven away, or that its contents would have been tampered with, during the period required for the police to obtain a warrant." 458 U.S. at 261.

Since the facts of this case reveal that there was probable cause to believe that the automobile contained narcotics, United States v. Ross, supra, flatly supports the validity of the search of every part of the vehicle and its contents including all containers and packages. United States v. Ross, supra, 456 U.S. at 825. Therefore, the Oklahoma court erred in ruling that the officers should have obtained a search warrant prior to searching the luggage in the trunk of the vehicle.

PROPOSITION II

THE SEARCH OF THE BAND-AID BOX FOUND IN THE FRONT SEAT OF THE VEHICLE WAS JUSTIFIED BOTH AS BEING AN OBJECT OF THE SEARCH UNDER THE AUTOMOBILE EXCEPTION AND AS A SEARCH INCIDENT TO A LAWFUL ARREST.

The Court of Criminal Appeals found that the search of the Band-Aid box, which had been thrown into the vehicle by the Defendant Castleberry as the officer approached with his badge, was illegal and should have been suppressed. The Court stated that since the "suspected locations of the contraband were the suitcases and the Band-Aid box which Castleberry threw in the car," the officers should have detained these containers until a search warrant had been obtained." 678 P.2d at 724. As noted previously, the Court stated that, under their interpretation of Ross, Arkansas v. Sanders, and United States

v. Chadwick, supra, if an officer has probable cause to believe there is contraband in a specific container in a car, he must detain the container and delay his search until a search warrant is obtained. 678 P.2d at 724.

For the reasons stated in Proposition I, the State contends that the holding of this Court in United States v. Ross, supra, is in conflict with this reasoning.

The search of the Band-Aid box should also be upheld based on the search incident to lawful arrest principle of the Fourth Amendment. In New York v. Belton, supra, this Court upheld the search of a jacket found in the backseat of a vehicle belonging to a defendant who along with his three companions were in custody and outside the

vehicle at the time of the search. This

Court specifically held:

"[w]hen a policeman has made a lawful custodial arrest of the occupants of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile.

"It follows from this conclusion that the police may also examine the contents of any containers found within the passenger compartment, for if the passenger compartment is within reach of the arrestee, so also will containers in it be within his reach." 453 U.S. at 460.

Therefore, the State contends that the Defendants Castleberry and Raineri who should not be able to immunize from search a container containing contraband by throwing such into a vehicle when the police approach. The facts of this case present no distinction between those in Belton, supra. The evidence reveals that the Defendant Castleberry was standing right next to the vehicle door

when he threw the box inside. Therefore, the area was obviously within his control at the time of his arrest. Cf., New York v. Belton, supra, (coat found in backseat of vehicle).

CONCLUSION

For the reasons stated, it is respectfully requested that the Petitioner's Petition for a Writ of Certiorari be granted.

Respectfully submitted,

MICHAEL C. TURPEN
ATTORNEY GENERAL OF OKLAHOMA

DAVID W. LEE
ASSISTANT ATTORNEY GENERAL
CHIEF, CRIMINAL AND FEDERAL
DIVISIONS

HUGH A. MANNING
ASSISTANT ATTORNEY GENERAL

112 State Capitol Building
Oklahoma City, OK 73105
(405) 521-3921

ATTORNEYS FOR PETITIONER

1a

APPENDIX A

**IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA**

No. F-82-227

No. F-82-228

TIMOTHY R. CASTLEBERRY

and

NICHOLAS RAINERI,

Appellants,

v.

THE STATE OF OKLAHOMA,

Appellee.

[Filed January 23, 1984]

OPINION

BRETT, Judge:

Timothy R. Castleberry and Nicholas Raineri, appellants, were charged with two (2) counts each of possession of a Controlled Dangerous Substance with Intent to Distribute in the District Court of Oklahoma County, Case No. CRF-81-2678. The jury found the appellants guilty on both counts, and

assessed punishment for Raineri at nine (9) years' imprisonment and a fine of five thousand dollars (\$5,000) for Count 1 and seven (7) years' imprisonment plus a five thousand dollar (\$5,000) fine for Count 2, and, for Castleberry, ten (10) years' imprisonment plus a fine of five thousand dollars (\$5,000) for Count 1 and seven (7) years' imprisonment plus a five thousand dollar (\$5,000) fine for Count 2. The trial court sentenced the appellants accordingly, additionally ordering the sentences to run concurrently and suspending the fine for Count 2 as to both appellants.

Appellant Castleberry was separately convicted of Possession of a Controlled Dangerous Substance, Cocaine, in Case No. CRF-82-2676 in the Oklahoma County District Court. The trial court sentenced him to eight (8) years' imprison-

ment. The appeals from the judgments and sentences are consolidated since the same factual circumstances are involved in each case.

At approximately noontime on June 9, 1981, Oklahoma City Police Officer R.D. Taylor received a telephone call from a previously unknown confidential informant who told him that two men, one named Castleberry, were staying in Room 113 of a motel in Oklahoma City, driving a blue Thunderbird with Florida license plates and carrying various narcotics in blue suitcases. The informant also gave physical descriptions of the men to the officer.

Officer Taylor proceeded immediately to the location, observed a vehicle matching the informant's description in front of the specified room, and discovered, from the motel clerk, that a

4a

man named Castleberry was registered in that room. He then returned to his car, positioned some five parking spaces from the other vehicle, and waited for back-up assistance to arrive. After several minutes, Officer Taylor observed the appellants emerge from the room and put several suitcases that matched the informant's description into the trunk of the car. At this point, Officer Taylor announced himself as a police officer, approached the car with his badge in one hand and his weapon in the other, and told the appellants to place their hands on the car. Raineri did as ordered, but Castleberry hastily closed the trunk lid and threw a small white object into the car. During a struggle which ensued between Officer Taylor and Castleberry, Castleberry reached up, locked the car door and shut it.

5a

At this point, Officer Citty arrived and opened the trunk of the car with keys Officer Taylor had removed from the door of the car. The officers opened the suitcases, found narcotics and placed the appellants under arrest. Officer Citty then searched the interior of the car and discovered a white Band-Aid box which contained a substance later determined to be cocaine.

Appellants' sole assignment of error is that the trial court erred in overruling their motion to suppress, thereby admitting evidence obtained as a result of an unlawful arrest, search and seizure. The Fourth Amendment of our federal constitution prohibits unreasonable searches and seizures. Searches conducted outside the judicial process, without prior approval by judge or magistrate, are **per se** unreasonable

under the Fourth Amendment, subject only to a few specifically established and well-delineated exceptions. Katz v. United States, 389 U.S. 347, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967).

The exceptions are jealously and carefully drawn, and there must be a showing by those who seek exemption that the exigencies of the situation made that course imperative. Coolidge v. New Hampshire, 403 U.S. 443, 91 S.Ct. 2022, 29 L.Ed.2d 564 (1971). Thus, it is incumbent on the State to show why the warrantless search of the car and its contents was permissible in the case at bar.

The State first contends that the search was lawful as incident to a lawful arrest. Appellants challenge both the legality of the arrest and the scope of the search.

Although Officer Taylor testified that he did not arrest the appellants until after the suitcases were opened, the appellants were not free to move after the officer advanced toward them with revolver drawn and ordered them to place their hands on the car. This Court has held that when an officer restrains the individual's freedom of movement, that person is under arrest. Wallace v. State, 620 P.2d 410 (Okla. Cr.1980), Castellano v. State, 585 P.2d 361 (Okla.Cr.1978). Under the circumstances, the appellants in the present case were under arrest from the moment Officer Taylor approached them and announced his identity.

Appellants submit that the arrest was unlawful because Officer Taylor did not at that time have probable cause to make it. The Oklahoma statutes allow a

warrantless arrest if the officer has reasonable cause to believe a felony has been committed by the person arrested. 22 O.S.1981, § 196. If at the time of arrest the facts and circumstances within the arresting officer's knowledge and of which he had reasonably trustworthy information were sufficient to warrant a prudent man in believing that an offense had been or was being committed, probable cause is established and the arrest is lawful. Beck v. Ohio, 379 U.S. 89, 85 S.Ct. 223, 13 L.Ed.2d 142 (1964), Greene v. State, 508 P.2d 1095 (Okla.Cr. 1973).

In this case, appellants argue that the officer had no basis for judging his informant to be reliable or the information trustworthy. We disagree. In Grimes v. State, 528 P.2d 1397 (Okla.Cr. 1974), this Court stated that an

informant's trustworthiness could be established if independent facts within the officer's knowledge corroborated the information. Here, the information was sufficiently corroborated as the only detail not confirmed before the arrest was the presence of narcotics in the suitcases, an allegation Officer Taylor could not lawfully verify before the arrest under the given circumstances.

The search made subsequent to the arrest, however, cannot be justified as a search incident to a lawful arrest, for it far exceeded the permissible bounds of such a search, that is, the area within the arrestee's immediate control from which he might gain possession of a weapon or destructible evidence. See Chimel v. California, 395 U.S. 752, 89 S.Ct. 2034, 23 L.Ed.2d 685 (1969). Both appellants were re-

strained--one was handcuffed, the other was on the ground with an officer pointing a gun at him--at the time of the search. The car doors and trunk were locked, so once the officer gained possession of the keys, there was no danger of appellants' procuring a weapon or destroying evidence from the interior of the car. A search incident to the arrest would therefore justify neither a search of the locked car nor a search of the suitcases therein.

The State's only other justification offered is that the warrantless search was lawful because the officers had probable cause to believe that narcotics were in the suitcases and exigent circumstances required prompt action. The so-called automobile exception on which the State relies was first recognized in Carroll v. United States, 267 U.S. 132,

45 S.Ct. 280, 69 L.Ed. 543 (1925). Cases subsequent to Carroll caused some confusion about when containers in cars may be searched, but the Supreme Court clarified the law in United States v. Ross, 456 U.S. 798, 102 S.Ct. 2157, 72 L.Ed.2d 572 (1982).

If the officer has probable cause to believe there is contraband somewhere in the car, but he does not know exactly where, he may search the entire car as well as any containers found therein. See United States v. Ross, 456 U.S. 798, 102 S.Ct. 2157, 72 L.Ed.2d 572 (1982); Chambers v. Maroney, 399 U.S. 42, 90 S.Ct. 1975, 26 L.Ed.2d 419 (1970); Carroll v. United States, 267 U.S. 132, 45 S.Ct. 280, 69 L.Ed. 543 (1925). If, on the other hand, the officer only has probable cause to believe there is contraband in a specific container in

the car, he must detain the container and delay his search until a search warrant is obtained. See United States v. Ross, 456 U.S. 798, 102 S.Ct. 2157, 72 L.Ed.2d 572 (1982); Arkansas v. Sanders, 442 U.S. 753, 99 S.Ct. 2586, 61 L.Ed.2d 235 (1979); United States v. Chadwick, 433 U.S. 1, 97 S.Ct. 2476, 53 L.Ed.2d 538 (1977).

The Ross court adopted Chief Justice Burger's distinction set out in his concurring opinion to Arkansas v. Sanders, 442 U.S. 753, 99 S.Ct. 2586, 61 L.Ed.2d 235 (1979), wherein he explained that:

[I]t was the luggage being transported by respondent at the time of the arrest, not the automobile in which it was being carried, that was the suspected locus of the contraband. The relationship between the automobile and the contraband was purely coincidental, as in Chadwick. The fact that the suitcase was resting in the trunk of the automobile at the time of respondent's arrest does

not turn this into an 'automobile' exception case. The Court need say no more. (Citations omitted). Id., at 766-767, 99 S.Ct. at 2594.

United States v. Ross, 456 U.S. at 813, 102 S.Ct. at 2166-67, 72 L.Ed.2d at 586-87.

The case at bar clearly falls within the Chadwick-Sanders line of cases. The suspected locations of the contraband were the suitcases and the Band-Aid box which Castleberry threw into the car. Accordingly, we hold that the motion to suppress was erroneously overruled. The officers should have detained the containers until a search warrant had been obtained.

We are not dealing with formalities. The presence of a search warrant serves a high function. Absent some grave emergency, the Fourth Amendment has interposed a magistrate between the citizen and the police. This was done not to shield criminals nor to make the home a safe haven for illegal activities. It was done so that an objective mind might weigh the

need to invade that privacy in order to enforce the law. The right of privacy was deemed too precious to entrust to the discretion of those whose job is the detection of crime and the arrest of criminals. Power is a heady thing; and history shows that the police acting on their own cannot be trusted. And so the Constitution requires a magistrate to pass on the desires of the police before they violate the privacy of the home. We cannot be true to that constitutional requirement and excuse the absence of a search warrant without a showing by those who seek exemption from the constitutional mandate that the exigencies of the situation made that course imperative.

McDonald v. United States, 335 U.S. 451, 445-456, 69 S.Ct. 191, 193, 93 L.Ed. 153 (1948).

For the reasons herein stated, the judgments and sentences appealed from should be, and the same are hereby, REVERSED.

CORNISH, J., specially concurs.

BUSSEY, P.J., Dissents.

CORNISH, Judge, specially concurring.

I fully concur in Judge Brett's analysis and application of the Supreme Court's precedents in this case. I would simply note that it has been settled in this State for several years that probable cause will not support a warrantless search in the absence of an emergency, i.e., "exigent circumstances":

[I]t is without question that the existence of probable cause alone will not satisfy a warrantless search. Chambers v. Maroney, 399 U.S. 42, 90 S.Ct. 1975, 26 L.Ed.2d 419 (1970); Whitehead v. State, 546 P.2d 273 (Okla.Cr.1976). Ordinarily, if an officer has probable cause to make a search, then he should go to a magistrate for a warrant authorizing such a search. Only when there are 'exigent circumstances' in addition to the existence of probable cause may an officer legitimately make a search without a warrant.

Blackburn v. State, 575 P.2d 638, 642 (Okla.Cr.1978).

Absent probable cause to search the entire car, the officers were only authorized to seize the suspect containers and hold them pending issuance of a search warrant. Although probable cause existed with regard to the containers, no exigent circumstances were shown such as to justify a warrantless search.